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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/742,321	12/19/2003	Meidong Yang	767.0015	5775

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HOWARD EISENBERG, ESQ.
2206 APPLEWOOD COURT
PERKASIE, PA 18944

EXAMINER

OGDEN JR, NECHOLUS

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/742,321

Applicant(s)

YANG ET AL.

Examiner

Necholus Ogden

Art Unit

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— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2003.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-90 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 31-34 and 63-66 is/are allowed.
6) ☒ Claim(s) 1-30, 35-62 and 67-90 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/18;10/04;4/04.
4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date. 2-15-05.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 5, 9-11, 15-26, 35-36, 42-44, 48-59, 67-72 are rejected under 35 U.S.C. 102(b) as being anticipated by Bhagwat et al (6,429,231).

Bhagwat et al disclose a topical composition for the treatment of dermatological disorders comprising sulfur components such as sodium sulfacetamide in an amount from 5 to 20% by weight; and sulfur in an amount from 1 to 10% by weight (col. 2, lines 40-61). Bhagwat et al further teach the inclusion of preservatives, thickeners, and emulsifiers such as fatty alcohols, fatty acids and mixtures thereof in an amount from 0.25 to 10% by weight (col. 3, lines 32-39). The emulsifiers may comprise oils and waxes and lipid vesicles in an amount from 0.3 to 30% by weight (col. 3, lines 54-65).

Example 1 teaches 3% sodium cocoyl isethionate; xanthan gum; 10.2% sodium sulfacetamide; 2.8% cetyl alcohol; 2.4% stearyl alcohol; 2.8% glyceryl stearate; 5% by weight sulfur; 0.1% thiosulfate and other materials (table 1, column 7, lines 35-62).

With respect to the method claims, Bhagwat et al teach that said ingredients are mixed, homogenized to obtain the formulation.

As this reference teaches all of the instantly required it is considered anticipatory.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 3, 6-8, 27-28, 37, 39-41, 60-61, 73 and 7-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bhagwat et al (6,429, 231).

Bhagwat et al is relied upon as set forth above.

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Specifically, Bhagwat et al do not specifically teach that said composition is free of perfumes and free of masking agents and also does not exemplify the proportions of the claimed ingredients.

It would have been obvious to one of ordinary skill in the art to modify the prior art to comprise compositions free of perfumes or masking agent because Bhagwat et al do not require such ingredients or make them essential to their composition.

With respect to the proportions, absent a showing to the contrary, it would have been within the level of skill of the ordinary artisan to combine the components in their requisite proportions to specifically teach the claimed invention, since Bhagwat et al teach each of the claimed ingredients and encompasses their proportion.

A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill the art, including nonpreferred embodiments. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989).

7. Claims 4, 38, 62 and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bhagwat et al (6,429,231) in view of Stiefel (2003/0118526)

Bhagwat et al is relied upon as set forth above.

Specifically, Bhagwat et al is silent with respect to the specific emulsifying wax N.F.

Stiefel disclose a skin treatment composition comprising sulfur, sulfacetamide, thickeners and other ingredients (0013-0014). Stiefel teach emulsifying wax N.F. (see table 2).

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It would have been obvious to one of ordinary skill in the art to include the emulsify wax N.F. to the compositions of Bhagwat et al because Stiefel teach many of the same ingredients such as the inclusion of sulfur ingredients for the use in skin treatment and Bhagwat et al invites the inclusion of emulsifying waxes as (col. 3, lines 54-65) wherein one of ordinary skill in the art would be motivated to include the emulsifying wax N.F. because only beneficial or synergistic results would have been obtained for skin treating, absent a shown to the contrary.

8. Claims 12-14, 29-30, 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bhagwat et al (6,429,231) in view of Shacknai et al (6,514,489).

Bhagwat et al is relied upon as set forth above. Specifically, Bhagwat et al lack the proportions of the surfactant composition.

Shacknai et al teach a composition for treating skin disorders comprising sulfur, sulfacetamide, 8.5% sodium cocoyl isethionate,, 9.0% sodium methyl oleyl taurate; 5.0% by weight of disodium oleamido MEA sulfosuccinate (example 3).

It would have been obvious to one of ordinary skill in the art to increase the proportions of the surfactants as taught by Shacknai et al because Bhagwat et al teach that said composition may be used to treat acne and Shacknai et al teach that the cleanser formulations, which require increase surfactants, are remarkably effective in treatment of acne (col. 10, lines 41-45). Therefore, absent a showing to the contrary, one of ordinary skill in the art would have been motivated to improve on the formulation of Bhagwat et al for the treatment of acne as taught by Shacknai et al.

Allowable Subject Matter


9. Claims 31-34 and 63-66 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholus Ogden whose telephone number is 571-272-1322. The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra N. Gupta can be reached on 571-272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Necholus Ogden
Primary Examiner
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